

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

JEANNE HARVIEUX,

Plaintiff,

v.

KOHL'S DEPARTMENT STORES, INC.,

Defendant.

Case No. _____

(Removed from Hennepin County District
Court, Fourth Judicial District

Case No. _____)

NOTICE OF REMOVAL

Defendant Kohl's Department Stores, Inc. ("Defendant"), through the undersigned counsel, hereby notice the removal of this civil action from the District Court of the Fourth Judicial District in and for Hennepin County, Minnesota, and to the United States District Court for the District of Minnesota. This Court has federal question jurisdiction under 28 U.S.C. §§ 1331 and 1446. In further support of this Notice of Removal, Defendant states as follows:

INTRODUCTION

1. On or about April 26, 2018, plaintiff Jeanne Harvieux ("Plaintiff") served Kohl's with the attached Summons and Complaint (the "Complaint") to be filed in the District Court of the Fourth Judicial District in and for Hennepin County, Minnesota. A copy of the Complaint is attached hereto as Exhibit A.

2. Plaintiff alleges that Defendant violated the Telephone Consumer Protection Act, 47 U.S.C. Section 227 *et seq.* ("TCPA"). (Compl. ¶¶ 18, 20, 23.)

**DEFENDANT HAS SATISFIED THE
PROCEDURAL REQUIREMENTS FOR REMOVAL**

3. This Notice of Removal is timely pursuant to 28 U.S.C. § 1446(b) because it is filed within 30 days of the time of service, *i.e.*, April 26, 2018, upon Defendant.

4. Venue is proper in this District under 28 U.S.C. § 1446(a) because this District embraces the place where the removed action is pending.

5. Pursuant to 28 U.S.C. § 1446(a), copies of all process, pleadings, orders and papers or exhibits served on Defendant or filed with the District Court, Fourth Judicial District, in and for Hennepin County, Minnesota that have been served upon Defendant are appended to this Notice as Exhibit A.

6. Written notice of the filing of the Notice of Removal will be promptly served on Plaintiff's counsel and a copy will be filed promptly with the District Court, Fourth Judicial District, in and for Hennepin County, Minnesota pursuant to 28 U.S.C. § 1446(d).

**REMOVAL IS PROPER UNDER 28 U.S.C. § 1331 BECAUSE
THIS COURT HAS FEDERAL QUESTION JURISDICTION**

7. The presence of a federal question gives rise to jurisdiction in this Court under 28 U.S.C. § 1331.

8. Federal question jurisdiction exists when an action presents a claim “arising under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331. Indeed, a District Court has original jurisdiction over cases “arising under” federal law pursuant to 28 U.S.C. § 1331.

9. The TCPA “was enacted to protect the privacy interests of residential telephone subscribers by placing restrictions on unsolicited, automated telephone calls to the home” *Int’l Sci. & Tech. Inst., Inc. v. Inacom Communications, Inc.*, 106 F.3d 1146, 1150 (4th Cir. 1997) (internal quotations omitted).

10. This Court has jurisdiction over this action under 28 U.S.C. § 1331 because, as stated above, Plaintiff’s claim arises under the TCPA.

11. On January 18, 2012, the United States Supreme Court issued its decision in *Mims v. Arrow Fin. Servs., LLC*, 565 U.S. 368, 132 S. Ct. 740 (2012) and found, in a unanimous decision, that the TCPA’s grant of jurisdiction to state courts does not deprive federal district

courts of federal-question jurisdiction over private rights of action with respect to claims arising out of the TCPA.

12. In light of *Mims*, which specifically confers federal question jurisdiction over claims arising under the TCPA, this action is properly removable to this Court.

13. In addition, under 28 U.S.C. § 1367, this Court may exercise supplemental jurisdiction over those claims, if any, that are not independently removable.

WHEREFORE, Defendant respectfully removes this action from the District Court of the Fourth Judicial District in and for Hennepin County, Minnesota, and to the United States District Court for the District of Minnesota.

Dated this 15th day of May, 2018.

Respectfully submitted,

/s/ Kimberly Fleming

Kimberly Fleming, Esq.

Cousineau, Van Bergen, McNee & Malone, P.A.

12800 Whitewater Drive, Suite 200

Minnetonka, MN 55343

Telephone: (952) 525-6922

Fax: (952) 546-0628

Email: kfleming@cvmmlaw.com

Attorneys for Defendant

Kohl's Department Stores, Inc.